

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL BYNOE,

Plaintiff,

v.

JANET YELLEN, *et al.*,

Defendant.

Case No. 3:21-cv-00509-MMD-CSD

ORDER

I. SUMMARY

Pro se Plaintiff Michael Bynoe, an inmate under the custody of the Nevada Department of Corrections (“NDOC”), has filed a civil rights complaint under 42 U.S.C. § 1983. (ECF No. 1-1 (“Complaint”).) Bynoe has additionally filed an application to proceed *in forma pauperis* and a motion for appointment of counsel. (ECF Nos. 1, 1-3.) Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb.¹ (ECF No. 3 (“R&R”).) The R&R recommends that Bynoe’s application to proceed *in forma pauperis* be granted, and that his Complaint be dismissed with prejudice. (*Id.*) Bynoe timely filed an objection to the R&R. (ECF No. 4 (“Objection”).) Because the Court agrees with Judge Cobb, and as further explained below, the Court overrules Bynoe’s Objection, adopts the R&R in full, grants Bynoe’s application to proceed *in forma pauperis*, and will dismiss this case with prejudice.

II. BACKGROUND

The Court incorporates by reference Judge Cobb’s recitation of the factual background provided in the R&R, which the Court adopts here. (ECF No. 3 at 4-6.)

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¹The Court notes that with the recent retirement of Judge Cobb, this case has been reassigned to Magistrate Judge Craig S. Denney. (ECF No. 5.)

III. LEGAL STANDARD

A. Review of the Magistrate Judge's Recommendation

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the Court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” *Id.* The Court’s review is thus *de novo* because Bynoe filed an Objection (ECF No. 4).

IV. DISCUSSION

Following a *de novo* review of the R&R and other records in this case, the Court finds good cause to accept and adopt Judge Cobb’s R&R in full.

Judge Cobb recommends that Bynoe’s Complaint be dismissed with prejudice as it does not appear that there is a private cause of action for non-receipt of funds under the legislation authorizing the disbursement of stimulus funds such as the Coronavirus Aid, Relief, and Economic Securities Act (“CARES Act”) and the American Rescue Plan Action. (ECF No. 3 at 10.) Judge Cobb further recommends dismissal for the following reasons: (1) there are no factual allegations supporting Bynoe’s conspiracy claim; (2) Bynoe’s reference to Federal Rules of Evidence 406 is improper; (3) the denial of a stimulus check does not amount to intentional infliction of emotional distress in Nevada; and (4) there are no allegations connecting Bynoe’s mental health with the alleged denial or delay of a stimulus payment. (*Id.* at 10-12.)

In his Objection, Bynoe appears to make four arguments.² (ECF No. 4 at 2-3.) He first argues that he has put forward factual allegations of a conspiracy and attaches an exhibit evidencing his birthday coincides with the Internal Revenue Service’s telephone number. (*Id.* at 2, 3.) His second argument is that he has not received his stimulus check due to state employee’s procrastination. (*Id.* at 2.) Bynoe’s third argument appears to be

²Bynoe’s arguments are difficult to follow and requires the Court to construe them as stated herein.

1 a mere statement that he requested relief and should be granted his request. (*Id.*) His final
2 argument is that Judge Cobb did not address in his R&R the issue of whether the state
3 actors have immunity. (*Id.*) The Court, having reviewed the Objection, finds that further
4 discussion of Bynoe's first three arguments are unwarranted as they do not specifically
5 challenge why the Complaint should be dismissed with prejudice. As to Bynoe's last
6 argument, Judge Cobb need not address qualified immunity as Bynoe cannot bring a
7 private cause of action regarding the disbursement of COVID-19 related stimulus funds.
8 Accordingly, Bynoe's four arguments lack merit, and his Objection is thus overruled.

9 **V. CONCLUSION**

10 It is therefore ordered that Plaintiff Michael Bynoe's Objection (ECF No. 4) is
11 overruled.

12 It is further ordered that the Report and Recommendation of Magistrate Judge
13 William G. Cobb (ECF No. 3) is accepted and adopted in full.

14 It is further ordered that Bynoe's application to proceed *in forma pauperis* (ECF No.
15 1) is granted. Bynoe is not required to pay an initial partial filing fee; however, whenever
16 his prison account exceeds \$10.00, Bynoe is required to make monthly payments in the
17 amount of 20% of the preceding month's income credited to his account until the full
18 \$350.00 filing fee is paid. This is required even if this action is dismissed, or otherwise
19 unsuccessful.

20 The Clerk of Court is directed to send a copy of this order to the attention of the
21 *Chief of Inmate Services for the Nevada Department of Corrections*, P.O. Box 7011,
22 Carson City, Nevada, 89702.

23 The Clerk of Court is further directed to file Bynoe's Complaint (ECF No. 1-1).

24 It is further ordered that Bynoe's Complaint (ECF No. 1-1) is dismissed with
25 prejudice as Bynoe cannot cure the deficiencies in this Complaint.

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1 It is further ordered that Bynoe's motion for appointment of counsel (ECF No. 1-3)
2 is denied as moot.

3 The Clerk of Court is directed to enter judgment in accordance with this order and
4 administratively close this case.

5 DATED THIS 5th Day of April 2022.

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11 MIRANDA M. DU
12 CHIEF UNITED STATES DISTRICT JUDGE
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